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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegle

**NOTICE OF HEARING ON
MOTION FOR APPROVAL OF
SETTLEMENT PURSUANT TO
RULE 9019 OF THE FEDERAL
RULES OF BANKRUPTCY
PROCEDURE**

Hearing Date: August 21, 2009
Hearing Time: 9:30 a.m.

NOTICE IS HEREBY GIVEN that a Motion for Approval of Settlement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Motion" was filed on by the USACM Liquidating Trust [Dkt. No. 7250]. The Motion seeks entry of an order approving the proposed settlement between the USACM Liquidating Trust and the following entities: JMK

Investments, Ltd. (“JMK”), John M. Keilly (“Keilly”), and Mountain West Mortgage, LLC (“MWM”) (collectively, “Defendants”).

Following extensive arms-length negotiations at a settlement conference conducted on April 21, 2009 before United States Bankruptcy Judge Newsome, the USACM Liquidating Trust and Defendants reached a tentative agreement to resolve the Pending Litigation subject to execution of a mutually-agreeable settlement agreement that is approved by the Bankruptcy Court. The material terms of the Proposed Settlement Agreement are summarized as follows¹:

- a. **JMK and Keilly Settlement Payment.** On or before February 1, 2010, the JMK Defendants will pay to the USACM Trust \$ 120,000.00 on JMK and Keilly’s behalf. If, on or before February 1, 2010, Keilly does not make such a payment, the USACM Trust will file a Stipulation for Entry of Agreed Judgment for \$120,000.00 against JMK and Keilly with the Bankruptcy Court or any other court of competent jurisdiction. The interest on such judgment will be calculated at a corresponding Federal Post-Judgment Interest Rate from the date of the JMK Defendants’ default until the payment is made.
- b. **MWM Settlement Payment.** On or before the expiration of nine (9) months following the Effective Date, MWM shall pay to the USACM Trust \$ 20,000.00. If, on or before the expiration of nine (9) months following the Effective Date, MWM does not make the payment, the USACM Trust will file a Stipulation for Entry of Agreed Judgment for \$70,000.00 against MWM with the Bankruptcy Court or any other court of competent jurisdiction. The interest on such judgment will be calculated at a corresponding Federal Post-Judgment Interest Rate from the date of MWM’s default until the payment is made.
- c. **Effective Date.** The “Effective Date” shall be the first business date upon which each of the following events has occurred: (a) the Proposed Settlement Agreement has been duly executed and delivered by each of the Parties; and (b) the Bankruptcy Court has entered a final order approving the Proposed Settlement Agreement.

¹ The following is solely a summary of the terms of the Proposed Settlement, and is not intended to amend or modify the actual terms of the written settlement agreement, which terms shall control in the event of any conflicts.

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- 2 d. **Release of Claims by the USACM Trust as to the Defendants.** Upon the
- 3 date a Defendant's payment is actually received by the USACM Trust, the
- 4 USACM Trust will fully release and discharge such tendering Defendants
- 5 and all of their present and former principals, employees, staff,
- 6 predecessors and successors, and their respective attorneys, consultants,
- 7 adjustors and insurers in their capacities as such, from any and all claims,
- 8 demands, damages, liabilities, actions, causes of action or suits at law or in
- 9 equity arising out of or related to the Transfers or the Pending Litigation,
- 10 that the USACM Trust ever had or now has against the Defendant Released
- 11 Parties.
- 12 e. **Release of Claims by the Defendants as to USACM.** Upon the Effective
- 13 Date, each Defendant, for itself and on behalf of all of his/its present and
- 14 former principals, employees, staff, predecessors and successors, and their
- 15 respective attorneys, consultants, adjustors and insurers in their capacities
- 16 as such, on the one hand will fully release and discharge USACM, the
- 17 USACM Trust, the USACM Trustee, and all of their present and former
- 18 trustees, managers, employees, agents, consultants, attorneys, directors, and
- 19 officers, and their respective insurers in their capacities as such
- 20 (collectively, the "USACM Trust Released Parties"), from any and all
- 21 claims, demands, damages, liabilities, actions, causes of action or suits at
- 22 law or in equity arising out of or related to the Transfers or the Pending
- 23 Litigation, that such Defendant ever had or now has against the USACM
- 24 Trust Released Parties.

25 **NOTICE IS FURTHER GIVEN** that if you do not want the Court to grant the relief

26 sought in the Motion, or if you want the Court to consider your views on the Motion, then you

must file an opposition with the Court, and serve a copy on the person making the Motion ***no later***

than 15 days after the date of this Notice. If the hearing date has been set on less than 15 days'

notice, then the opposition must be filed and served ***no later than 5 business days*** before the

hearing. The opposition must state your position, set forth all relevant facts and legal authority,

and be supported by affidavits or declarations that conform to Local Rule 9014(c).

If you object to the relief requested in the Motion, you ***must*** file a **WRITTEN** response to

the Motion with the Court. You ***must*** also serve your written response on the person who sent

you this notice.

1 If you do not file a written response with the Court, or if you do not serve your written
2 response on the person who sent you this notice, then:

- 3 • The Court may *refuse to allow you to speak* at the scheduled hearing; and
- 4 • The Court may *rule against you* without formally calling the matter at the hearing.

5 **NOTICE IS FURTHER GIVEN** that the hearing on the said Motion will be held before
6 the Honorable Linda B. Riegler, United States Bankruptcy Judge, in the Foley Federal Building,
7 300 Las Vegas Boulevard South, Third Floor, Bankruptcy Courtroom No. 1, Las Vegas, Nevada
8 89101 on **Friday, August 21, 2009, at 9:30 a.m.**

9
10
11 Dated:

12 **DIAMOND MCCARTHY LLP**

13
14 By: /s/ J. Maxwell Beatty
Allan B. Diamond, TX 05801800 (pro hac vice)
15 Eric D. Madden, TX 24013079 (pro hac vice)
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Counsel for USACM Liquidating Trust

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of DIAMOND MCCARTHY LLP, and that on the 21st day of July 2009, I served a true and correct copy of the foregoing **NOTICE OF HEARING ON MOTION FOR APPROVAL OF SETTLEMENT PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE** (a) by electronic transmission to (i) all parties on the USACM Post-Effective Date Service List Dated March 31, 2009 and (ii) counsel for defendants as follows:

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/s/ Catherine A. Burrow, CLA
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